

**Gender Education,  
Research and Technologies**

# **Gender Discrimination and the Burden of Proof in EU Legislation**

*Comparative review of the legislation  
in force and the case law*

SUMMARY

Sofia 2004

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*The JDP aims to assist Bulgaria in establishing the independence of its judicial system by supporting the democratic processes and the market reforms and also, to assist in the country's accession to the EU. The main components of the JDP are the training of the practitioners within the judicial system and the reform of the judicial administration.*

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## Foreword

In April 2002, in carrying out the legislative programme of the Council of Ministers from 1 January until 31 July 2002, at the initiative of the Ministry of Labour and Social Policy and the National Council on Ethnic and Demographic Issues at the Council of Ministers a working group was established to make a ***Draft Act for Protection Against Discrimination***, which is unprecedented for Bulgaria. The so-called general Anti-Discrimination Act underwent a number of challenges in the Parliamentary Committees and came into force almost two years later: on 1.01.2004.

The Act for Protection Against Discrimination or the Antidiscrimination Law as it will be referred hereafter stipulates a prohibition for any direct and indirect manifestation of discrimination based on sex, race, colour, ethnic belonging, nationality, political or other beliefs, religion or faith, disability, age, sexual orientation, marital status, origin. The Act settled the protection against discrimination in the exercise of the right to work, the right to education, protection in the exercise of other rights, sexual harassment at the workplace, the proceedings for protection against discrimination (before the Commission for the Protection Against Discrimination and before the Court) and administrative penal measures for protection.

The adoption of the new law is an important step in increasing the opportunities for protection in the cases of violation of equality in treatment based on sex, especially through judicial proceedings, as well as an opportunity to seek remedy for inflicted damages. The adoption and the enactment of this law, however, is far from being sufficient. By its drafting, a number of EU directives were transposed in Bulgarian legislation, which refer to the equal treatment of sexes in the area of employment and the conditions of labour, payment for work, professional training, as well as regulating the burden of proof in the cases of gender-based discrimination (Directive 75/117/EEC, Directive 76/207/EEC, Directive 97/80/EC, Directive 2000/43/EC, Directive 2000/78/EC). The introduction of all this European legislation, reinforced by the regulations of the EU in our legislative system, raises a number of issues related to the philosophy of the act, with terms and concepts, which are new and have not yet gained popularity in the Bulgarian legal domain.

The lack of information at an accessible language with regard to the standards, the legislation and judicial practice of the EU Member States in the area of the so called gender discrimination, the insufficient awareness of citizens regarding their own rights, the lack of systematic training of judges

and lawyers, doubtlessly obstruct the actual enforcement of the law and the pursuit of protection by judicial proceedings. Taking into account the fact that the setting-up of the Commission for Protection Against Discrimination is pending, currently, the district court remains the only institution, from which protection can be sought for the violation of rights on the basis of gender in the area of employment, education and training, sexual harassment in the workplace and other rights within the meaning of Section III of the Act for Protection Against Discrimination.

No relevant case law exists in Bulgaria with regard to the implementation of the principle of the equal treatment of men and women, whereas the interviews made and the conversations with judges and lawyers during training seminars show that competence and practice in the area are still missing. Gender based discrimination is a concept, which, even taken the existence of a law, is regarded with scepticism because of the existing stereotypes, the existence of other, "more acute" issues and, last, but not least, due to the introduction of new concepts and principles, which require special knowledge and preparation for their implementation. Terms like "equal treatment", "equal opportunities", "direct and indirect discrimination", and "reversal the burden of proof" are still regarded as abstract.

A key moment of exceptional importance in the new law in the area of effective protection against discrimination (including all types of gender discrimination) is the principle of reversal the burden of proof in the case of rights violation.

We honestly hope that this practical tool will help for increasing the informed awareness of the judiciary and the members of the Bar in the implementation of the principle in specific cases. Bearing in mind that the improvement of the professional qualification of the representatives of the judiciary is a part of the Updated Programme for the Implementation of the Strategy for Reforming the Bulgarian Courts, we also hope that this publication will aid in the professionalism of the Bulgarian courts in solving similar cases, which will result in the effective access to justice for the victims.

# I. EU Policy and Legislation in the Area of Gender Equality

## *1. Some Terminology and Concepts*

The European legal regulation of the rights of women contains and uses several major concepts, describing the social interrelations between sexes, which, in the course of time, have acquired some principal weight and continental specifics. These terms to a great extent overlap with the universal definitions, provided within the framework of the UN. In fact, here we are referring to terms, identical in their meaning, but specified and genetically related to the economic aspect of the goals, envisioned in the establishment of the European Community. Therefore, the regional (European) aspect of women's rights is determined within labour law, in a social context and the legislation of the EU created for the purpose of providing the equality of men and women in all areas, emphasising explicitly on employment, labour and work pay.

### *1.1 Equality, Equal Rights and Equal Treatment of the Sexes*

The general or universal international regulation in the area of women's rights is founded on the principles of equality and non-discrimination. Equality as a concept and a principle is an integral part of human rights in all areas of the private and public domains. And, thereby, the Universal Declaration of Human Rights (UDHR) of 1948 proclaims: "All human beings are born free and equal in dignity and rights" (Article 1).

However, irrespective of this, the question stands about the origin of the inequality between sexes. To answer this question, we have to review sexes in their biological and socio-cultural context or the female sex as a biological fact (sex) and in a socio-cultural meaning (gender).

### *1.2 Equal Opportunities and Equal Treatment*

The equality of sexes (gender equality) is among the main tasks of the EU and can be qualified as one of the main indicators for the quality of life of women and men. The relation between the principles of "equality", "equal treatment" and "discrimination" is underlined especially in the conference of government leaders of EU Member States, held in Amsterdam and concluded by the signature of the respective contract in June 1997. It is the treaty implementing the highest expectations in the area of the legal establishment of the principle of equality and the encouragement of the equal treatment of men and women.

Together with the terms already mentioned, the Amsterdam Treaty also introduces terms such as "equal opportunities" and "equal treatment". The equal

opportunities are a key concept in the entire regulation of women's rights in European community law. It is not by chance that all directives have been drawn so as to establish equal opportunities for the sexes. However, some specialists define the meaning of "equal opportunities" as an emerging task for the states "to remove the obstacles for women's full attainment of this status, giving temporary preference to women". However, this perception rather approximates the universal international definition for "positive discrimination". Equal opportunities mean the establishment of suitable conditions and prerequisites i.e. equal chances for realising the "obtained" access to all areas of public life.

### **1.3 Affirmative Actions**

With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. (new para 4 of Article 141 (former 119) of the Amsterdam Treaty). Therefore, here comes another concept related to the principle of equal treatment, which is typical for the common (universal) international regulation in the area of women's rights: these are the so called "**positive measures**" or "**affirmative actions**".

As a synonymous term comes the formula of "**positive discrimination**", whereas the Convention on the Elimination of All Forms of Discrimination Against Women uses the term "**temporary special measures**" in the meaning that "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved." (Article 4, para 1).

### **1.4 Direct and Indirect Discrimination**

The definition of the term **indirect discrimination** in Article 2, para 2 of Directive 97/80/EC regarding the burden of proof in the cases of discrimination based on sex is exceptionally important for the protection of women's rights in several areas where this type of discrimination is encountered "indirect discrimination shall exist where an apparently neutral provision, criterion or practice disadvantages a substantially higher proportion of the members of one sex unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex".

**Direct discrimination** is the case "where one person is treated less favourably on grounds of sex than another is, has been or would be treated



in a comparable situation". (Directive 2002/73/EC)

### **1.5. Gender Mainstreaming**

The principle of "gender mainstreaming" was formulated for the first time at the European level in 1996 in a document of the European Commission entitled "Incorporating *Equal Opportunities for women and men into all policies and activities*". The goal is to systematically integrate the respective priorities and needs of women and men in all policies in view of attaining equality between the sexes.

## **2. Gender Based Discrimination in EU Legislation**

### **2.1. The Development of the European Integration Process - from Economic Integration to Social Policy**

The EU is far from being the first international structure, which regulates social matters and creates anti-discriminatory legislation, but it is the first one starting with the idea of the integration of the member states mainly in the economic area.

In fact, the European integration process has a long and rich history. It started with the signature of the treaties establishing the European Communities in the 50s (The European Community on Coal and Steel, the European Economic Community and the European Community for Atomic Energy)<sup>1</sup>, passing through the Maastricht Treaty for the establishment of the EU<sup>2</sup>, whereas nowadays, the European integration process is an aggregate of treaties, decisions, principles, recommendations and action programmes, which have already outreached the narrow frames of the economic processes and have entered in the respectively generated social consequences.

### **2.2 Gender Equality in the EU *acquis communautaire***

The *acquis* or the so called standards of the EU in the area of gender equality constitute an aggregate of a considerable number of normative and recommendation documents (forming the primary and the secondary law of the Community), as well as the case law of the Court in Luxembourg, which reflect the major trends of EU policy in the respective area. Unlike the documents of the Council of Europe, which are mainly recommendations the *acquis communautaire* is legally binding.

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<sup>1</sup> In 1951 the European Community for Coal and Steel was established through a treaty signed in Paris, whereas the Rome treaties of 1957 set up the European Economic Community and the European Community for Atomic Energy)

<sup>2</sup> The Maastricht Treaty for the establishment of the EU was signed in 1992 and enters into force as of 1 November 1993.

## II. EU Directives in the Area of Gender Equality

Even the Universal Declaration of Human Rights and the two Covenants of 1966 (the International Covenant for Civil and Political Rights and the International Covenant for Economic, Social and Cultural Rights), together with their general anti-discriminatory clauses contain provisions, related to the equality of the sexes. However, there is a difference in the UN and the EU standards, which guarantee human rights. In the first place, a different approach is used in the framework of EU legislation for guaranteeing the observance of the rights related to discrimination by all criteria, including gender based discrimination. In this respect, an indicative value can be attributed to the directives, which have provided a further development of the principles, on the one hand, and, on the other, they establish an effective mechanism of control.

The principle of equal pay for equal or equivalent work of men and women is fundamental for the legal regulation of women's rights in the EU. Worded by Article 119 (currently Article 141 of the Amsterdam Treaty) of the Founding Treaty for the Establishment of the EEC, in 1975 it was specified and additionally guaranteed by **Council Directive 75/117/EEC**. The goal of the Directive is the approximation of the legislations of Member States with regard to the implementation of the principle of equal pay of women and men, not only for equal, but also for equivalent work. Irrespective of the fact that the Council Directive was adopted in 1975 it is difficult, even nowadays, to overcome the stereotypical attitudes towards the roles of men and women in society.

Almost immediately, following the adoption of Directive 75/117/EEC, in the year after, a second directive was adopted in the area of equal treatment of men and women - **Directive 76/207/EEC** with regard to the implementation of the principle of equal access to employment, education, vocational training and development, and working conditions. The Directive treats the implementation of the principle of equal treatment in the entire working process - from the recruitment of the job applicants to the termination of the working relationship. It specifies and complements Article 13, Article 137 and Article 141 of the Rome Treaty.

Directive 76/207/EEC was revised and amended in 2002 with **Directive 2002/73/EC**.

With the adoption of the Single European Act (1989) and the Charter of the Fundamental Rights of Workers (which, however, was signed in the UK) new opportunities are established for the regulation of the equality of the sexes. The Single European Act introduces to the Rome Treaty a new Article 118a,

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which provides the European Community with the opportunity for legislation for the purpose of identifying the minimum requirements for the safe and healthy conditions of work.

As a result of this change, in 1992 **Directive 92/85/EEC** was adopted regarding the adoption of measures for the encouragement and the improvement of the health and safety of pregnant female workers, as well as that of mothers of infants or breastfeeding mothers. This is the tenth special directive in the meaning of Article 16, para 1 of Directive 89/391/EEC (Framework Directive).

In 1997 the EU Council adopted **Directive 97/80/EU**, treating the shift of the burden of proof for the cases of discrimination based on sex. Its adoption is in unison with the opinion of the EU Council that expansion is needed of the rights related to the burden of proof in order to guarantee a better effectiveness of the measures, taken by Member States for applying the principle of equal treatment in work pay, access to employment, working conditions, education, vocational training and development, protection of motherhood and the upbringing of children, and, last but not least, parental leave. These are the rights under Article 119 of the Rome Treaty and Directives 75/117/EEC, 76/207/EEC, 92/85/EEC and 96/34/EC.

### **III. Gender Equality in the Legislation of Member States and the Countries in the Process of Accession to the EU: a Comparative Review**

Anti-discriminatory legislation and the policy of guaranteeing gender equality are two of the components of the EU legal standards, on which all applicant-member states negotiate under Chapter 13 *Social Policy and Employment*. These components, which very much complement each other, are very important, as, by the time of the physical accession of the states, they need to have become a part of their domestic legislation and practice. However, as regards the Member States, a considerable part of the *acquis communautaire* in the area of gender equality has acquired full effect for their national legislations, due to the fact that they were bound by specific deadlines. Exception is made for Directive 2002/73/EC, which stipulates a harmonisation deadline until 15 October 2005.

In the process of their accession to the EU, the states from Central and Eastern Europe - both those, which are already a part of the Union, and those in the process of accession, outlined the various priorities, which exerted influence on their negotiation procedures. The principle of gender equality was gradually adopted, whereby most of the candidate states directed their attention to the harmonisation of legislation in the area of equality in the labour market by introducing the principle of equal pay, and, thereby, the principles of equal access to employment and the equal working conditions.

## **IV. The Bulgarian Antidiscrimination Law - an Approximation of European Standards**

After the coming into force of the Antidiscrimination Law on 1.1.2004, the persons affected by unequal treatment, as well as the organisations, protecting the right to equal treatment, filed claims for the defence of their rights.

No rights have been exercised yet, and, respectively, no data are available for the filing of claims for the protection from discrimination based on sex. This does not mean that there is no gender-based discrimination. However, it means that no judicial protection has been sought for the rights of the discriminated.

Judging from the claims, it has to be accepted that, probably (but without a specific research based on particular data), the discrimination based on the unequal treatment by ethnic and racial origin is much more widespread. The protection sought before the court is exactly for determining the violations of the right to equal treatment of persons of different ethnic origin. However, the legal regulations provide for the rights of all persons affected by unequal treatment, irrespective of the basis of such unequal treatment. In this sense, those affected by unequal treatment based on sex could make use of the same protection means. The courts have examined both claims based on direct discrimination, when a person has been subject to a more unfavourable treatment on the grounds of race, sex, ethnic belonging, nationality..., and also indirect discrimination. The claims of persons of different ethnic origin have been determined, whose applications for various job positions have been rejected by reason of their ethnic origin. And also, claims were determined based on alleged indirect discrimination, when, due to certain regulations and practices, an unfavourable treatment has been given to certain persons as compared to other ones of a different ethnic origin.

In all cases the court investigated the facts in view of the legal norms in force along the following lines.

Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to which the Republic of Bulgaria is a party since 1992, stipulates that the exercising of the rights and freedoms, provided for under this Convention, shall be secured without any discrimination on the grounds of sex, race, colour, language, religion, political and other convictions, national and social origin, association with a national minority, property, birth or other status.

The Antidiscrimination Law settles the protection against all forms of discrimination and assists in its full prevention. Therefore, special proceedings for protection against discrimination have been provided for, which are carried before the Commission for the Protection Against Discrimination, which shall be established by virtue of this law, as well as special court proceedings (Articles 71 and 72). These norms stipulate that every person, whose rights under this law or under other legislation settling the equality in treatment have been violated, may file a claim before the district court and request: 1. Declaration of the violation, judgement that the defendant should cease committing the violation and restore the situation as before the perpetration, abstaining from further violations in the future and compensation for damages. These are special claims stemming from the rule that no one has the right to prejudice against another, and no one can damage another and owes a compensation for the damages inflicted in violation of this rule. The protection of the latter right in Bulgarian legislation is generally formulated in the provisions of Articles 45-52 of the Contracts and Obligations Act. The provisions of Articles 71 and 72 of the Antidiscrimination Law provide for the special protection based on the right to equal treatment and its violation for all forms of discrimination based on sex, race, nationality, ethnic belonging, citizenship, origin, religion or faith, education, convictions, political affiliation, personal or public standing, disability, age, sexual orientation, marital status, property standing or any other grounds established by a law or an international treaty to which Bulgaria is a party.

A legal definition exists of direct and indirect discrimination. Direct discrimination is the unfavourable treatment of any person, based on the listed criteria as compared to the past, present or prospective treatment of another person under comparable, similar circumstances. Indirect discrimination is the placement of a person, based on these grounds, in a more unfavourable position as compared to other persons, by a seemingly neutral provision, criterion or practice, except where this provision, criterion or practice is objectively justified in view of attaining the goal of the law and the means for such attainment are appropriate and necessary.

Therefore, the Antidiscrimination Law, in Article 71, has provided for the right to protection against all forms of discrimination.

Unlike the general rule in Article 45 of the Contracts and Obligations Act, under Article 71 para 2 of the Antidiscrimination Law, an option is provided for the protection of collective rights by two instruments, and, namely, the expressly provided right of trade unions and their divisions, as well as for the legal non-profit entities for carrying activities of general public utility. For these legal entities a stipulation was made that they can file a claim on

behalf of the persons, whose rights have been violated, at the latter's request. Therefore, a request needs to have been made by persons, whose rights to equal treatment have been violated, so that the trade unions and their divisions, as well as the non-profit legal entities committed to activities of common public utility could file a claim. This is with regard to the protection of a right outside the conditions of a procedural substitution. In the case of procedural substitution, it is a necessary condition that the substituting person is interested to protect the rights of the person, whose rights have been violated. While in the cases under Article 71 para 2 of the Antidiscrimination Law, the legislator has envisioned the right to claim for the organisations themselves, but at the request of the affected persons. In these cases, as set forth under the provisions of Article 174 of the Civil Procedural Code, the persons, whose rights have been violated, can join into the process. And, also, to the contrary, where the affected persons have claimed their rights under the provisions of Article 71 para 1 of the Antidiscrimination Law, then the persons under Article 71 para 2 of the same law may intervene in the civil proceedings. Moreover, according to Article 71 para 3 of the Antidiscrimination Law the trade unions themselves, and the non-profit legal entities committed to activities of common public utility may, at their own discretion, even without the request of the persons under Article 71 para 1 file a claim for the protection of the rights of a multitude of persons. They will respectively request the declaration of the violation and the judgement that the defendant should cease committing the violation and restore the situation as before the perpetration, abstaining from further violations in the future.

Court proceedings also provide for the announcement of the claim submission by a publication or in another manner in writing, by sending an invitation to other affected persons, to trade unions and their divisions, as well as non-profit legal entities committed to activities of common public utility for joining into the legal proceedings. The proceedings are conducted as set forth in the Civil Procedural Code.

In all these legal remedies for the protection of the rights of persons affected by the unequal treatment, the legislator has set forth an important instrument, namely: **the shift of the burden of proof.**

Article 127 of the Civil Procedural Code stipulates that each of the parties claiming any particular facts has to prove them. The legislator has considered that, for the person, who is the victim of discrimination, it would be very difficult to prove all facts, which are of importance for the identification of any particular actions or inactions as discrimination. Therefore, a special norm was created - Article 9 of the antidiscrimination law.

There is an opportunity for the court to adjudicate the burden of proof

in a manner different than the usual, in order to accept the existence of discrimination. It is established following the procedure set forth in this law, and, therefore Article 9 of the Antidiscrimination Law contains the provision for shifting the burden of proof. This shifting is made at the discretion of the court. If the court finds that a sufficient number of indirect evidence exists, it can accept that there is discrimination. Then the defendant bears the burden to establish that he/she did not commit discrimination. And, respectively, to establish that he had a justifying reason (from the perspective of legal order) to commit the actions, which constitute indirect discrimination, but he/she was legally protected in this action and there was a legal justification for doing it. Only legal facts are always subject to proof. Therefore, in the cases of claimed discrimination, the plaintiff has to establish certain facts, in view of which the court would accept the possibly substantiated conclusion that discrimination is the case and enforce the provision of Article 9 of the antidiscrimination law, making an assessment as to whether the defendant has proved that the right to equal treatment has not been breached or there was a substantial reason for the commitment of the actions or inactions, respectively identified as discriminatory.

Article 9 of the Antidiscrimination Law provides for a special rule on the burden of proof. With the presumptions, there is a substantive legal norm, which equalises the legal consequences of the presumption prerequisite and the presumed fact. In the case of a presumption, the court is bound to accept that where the presumption prerequisite has been proved, the facts were as set forth in the presumption norm. The rule under Article 9 of the Antidiscrimination Law does not create an obligation for the court. A special rule is created, which, if the court finds that there are sufficient facts from which a conclusion can be drawn that discrimination is the case, then the defendant has to prove that he/she did not breach the right to equal treatment. Therefore, legislators have left to the court the assessment about the conclusion of discrimination on the grounds of some facts, which do not fully confirm the existence of discrimination in order to ascertain that it was proven, if the respondent party does not establish that the right to equal treatment has not been violated. In the case of presumptions, the court is bound to adopt the consequences set forth in their norms. While under Article 9 of the Antidiscrimination Law, the court makes an analysis of the facts of the case and, only afterwards, it can establish the existence of discrimination and investigate whether there is enough evidence of the non-violation of the right to equal treatment. Therefore, in each individual case, an assessment has to be made as to whether there is a breach of the right to equal treatment. In this sense, only the incidence of affiliation with any one



of the criteria listed under the Antidiscrimination Law as grounds for discrimination is not sufficient to impose a shift of the burden of proof. It has to be ascertained that unequal treatment is the case, compared to otherwise equal conditions, and, again, the burden of proof lies with the party claiming discrimination. Such party has to establish both the discriminatory criterion and also the existence of otherwise equal conditions, in comparison to which the respondent will have committed a violation by treating, under the same conditions, another person more favourably. In this sense, the court is not always bound to shift the burden of proof, but only in the presence of certain prerequisites and in view of the specific case.

According to the rule under Article 9 of the antidiscrimination law, where the court finds facts, which can lead to a substantiated presumption of discrimination, then it has to be assumed that such discrimination took place. This applies with exception of the cases, where the respondent proves that they did not breach the right to equal treatment. The proof, on behalf of the respondent, has to be full, covering all the facts to which the plaintiff refers and establishing other facts, rejecting the existence of the facts, ascertained by the plaintiff. Also, they have to prove such facts, from which it can be concluded that no discrimination is the case, or that the discriminatory actions committed are justifiable in view of a legitimate purpose, whereby the means for the attainment of such purpose are appropriate and necessary.

For all of the above cases, the court investigates the circumstance as to the self-determination of the persons with regard to their ethnic belonging, and also, the criteria for comparing the treatment. Where such facts are found, the court has assumed that direct or, for the second instance respectively, indirect discrimination is the case. The decisions of the courts of first instance, which have not taken legal force, have established the existence of discrimination by accepting that the respondent has not proven the absence of unequal treatment or other prerequisites, in order to accept that no discrimination is the case. Court decisions accept that discriminatory actions have been taken on behalf of employees of legal entities. The violations, which are facts established by the court, have been found sufficient for the application of the provision of Article 9 of the Antidiscrimination Law and accept that the respondents have to show the existence of a justifying reason or the non-violation of the right to equal treatment, by proving that the same criteria and practices have been applied to other persons from a different ethnic origin under the same conditions as to the plaintiff.

**Case law of the Sofia District Court**

The court decisions offered are an illustration of the principle of shifting the burden of proof. They do not refer to cases of gender based discrimination, but are interesting from the perspective of the implementation of the Act for Protection Against Discrimination. The decisions have not yet become legally effective.

**Court Decision  
Civil case No 2164 as in the 2004 dockets  
of the Sofia Regional Court,  
Reported by Judge V. Valkov**

The substance of the claims on the legal grounds of Article 71 para 1 items 1, 2 and 3 of the Act for Protection Against Discrimination (APAD) and a responding claim on the grounds of Article 45 of the Contracts and Obligations Act.

**Court Decision  
Civil case No 1184 as in the 2004 dockets  
of the Sofia Regional Court,  
Reported by Judge M. Raycheva**

Objectively joint claims have been filed under Article 71, para 1, items 1, 2 and 3 of the Act for Protection Against Discrimination.

## APPENDIX II

The Annex contains decisions from the practice of the European Court in Luxemburg for the last years, which illustrate the interpretation and the enforcement of provisions from directives, included in the scope of Directive 97/80/EU on the burden of proof. The decisions are listed in a chronological order - by the sequence of the issuance of the directives and the ruling of the decision respectively. Some abridgements have been made to the texts of the decisions.

### **Case C-187/98**

The Commission of the European Communities vs. the Hellenic Republic  
(Decision of 28 October 1999)

**Directive 75/117 - Article 3**

### **Case 236/98**

(Decision of 30 March 2000)

**Directive 75/117**

Reference for a preliminary ruling by a Swedish court with regard to the interpretation of Article 119 of the EC Treaty and Directive 75/117.

### **Case C-285/02**

(Decision of 27 May 2004)

**Directive 75/117 - Article 1**

Reference for a preliminary ruling by a German court with regard to the interpretation of Article 141 EC and Directive 75/117.

### **Case C-322/98**

(Decision of 26 September 2000)

**Directive 76/207 - Article 2, para 1, Article 5, para 1**

Reference for a preliminary ruling by the Hamburg Regional Court with regard to the interpretation of Article 5, para 1 of Directive 76/207/EEC.

### **Case C-79/99**

(Decision of 7 December 2000)

**Directive 76/207**

Reference for a preliminary ruling by the Administrative Court of Frankfurt am Main on eight questions with regard to the interpretation of Directive 76/207/EEC.

APPENDIX III

**COUNCIL DIRECTIVE 75/117/EEC**

Of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

Official Journal L 045 of 19 February 1975 p. 0019

**COUNCIL DIRECTIVE 76/207/EEC**

Of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

Official Journal 039 of 14 February 1976, p. 0040

**DIRECTIVE 2002/73/EC**

Of the European Parliament and the Council of 23 September 2002 on the revision and amendment of Directive 76 /207 /EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions  
(a text of significance for the European economic domain)

**COUNCIL DIRECTIVE 92/85/EEC**

Of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding  
(tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

Official Journal no. L 346, 28/11/1992, p. 0001-0008

**COUNCIL DIRECTIVE 79/7/EEC**

Of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security

**COUNCIL DIRECTIVE 97/80/EC**

Of 15 December 1997 on the burden of proof in cases of discrimination based on sex  
Official Journal L 014 of 20/01/1998 p. 0006-0008